35TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { Ex. Doc. No. 43.

CARMICK AND RAMSEY CLAIM.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

COMMUNICATING

A copy of the letter of Messrs. Johnson and Williams in relation to the decision upon the Carmick & Ramsey claim.

JANUARY 13, 1859.—Referred to the Committee on the Judiciary, and ordered to be printed.

To the House of Representatives:

I herewith transmit a report from the Comptroller, with a copy of the letter of Messrs. Johnson and Williams in relation to the decision upon the Carmick & Ramsey claim. This should have accompanied the papers which have already been transmitted to the House, but was omitted by mistake.

JAMES BUCHANAN.

WASHINGTON CITY, *January* 13, 1859.

TREASURY DEPARTMENT, COMPTROLLER'S OFFICE,
January 13, 1859.

SIR: In conformity with your direction endorsed thereon, I have the honor to transmit a copy of the letter of Messrs. Johnson and Williams, addressed to you on the 23d August last, in relation to my decision upon the Carmick & Ramsey claim, and referred by you to this office to be filed on yesterday, the 12th instant.

Most respectfully, your obedient servant,

W. MEDILL,
Comptroller.

THE PRESIDENT.

WASHINGTON, *August* 23, 1858.

SIR: In the matter of the claim of Edward H. Carmick and Albert C. Ramsey, under the 6th section of the act of the 18th of August,

1856, the Comptroller, Mr. Medill, has at last, on the 11th instant, made his report. The character of this report forces us, as the counsel of the claimants, to appeal to your excellency for redress. It is the design of this communication to state the reasons which we confidently believe entitle the parties to such relief as we are about to ask.

The report, a copy of which accompanies this paper, will show you that the Comptroller has so much occupied himself in an effort to vindicate the late Postmaster General Campbell, and in the kindred office of questioning the veracity of Congress, that he does not seem to have had time to consider or apply the rule of damages by which the amount due the claimants, under the act of Congress, (the only question it submitted to him,) should be ascertained. In this way, and in this way only, can we account for his palpable misapprehension of the amount claimed by the claimants. When these gentlemen were demanding the worth or value of their contract, surely, unless his mind was altogether turned in another direction, he ought to have been able to perceive that that was not claiming the whole of the contract price of $424,000 per annum. He should have known that from that sum was to be deducted the annual expenses. In these there was an annual amount to be paid the Pacific Mail Company for the service between Acapulco and San Francisco; another for the land service between Vera Cruz and Acapulco—being, together, near $300,000 a year. If these facts escaped him, it was his blunder, not the fault of the claimants. If, also, he did not know that this was, by a familiar rule, direct, and not consequential damages, this, too, was his own misfortune, and not the fault of others. These strictures are consistent with the usual practice in such cases, and observed in this for the claimants by their attorney who filed the declaration of claim so grossly misunderstood by this accounting officer; and had the officer observed accustomed official candor in his intercourse with the attorneys, they would have enabled him to have learned this much at least, and thereby have relieved him of the fog through which he has blindly groped his way.

Second. It is not apparent how the Comptroller can apply his reasoning as to the preamble of a law, as he terms it, in the sense and meaning of the rule of construction to which he refers. In this instance *no preamble is found* as in contradistinction to the body of the act or the enacting clause. Its perspicuous and comprehensive terms rendered either unnecessary. Section the 6th contains, as far as this claim is concerned, the entire law, the whole will and direction of the legislature; and this contains within itself only so much recital as was essential to identify the subject-matter, the contract, and the abrogation of the contract by the Postmaster General, and submitting to the Comptroller not the two facts recited by Congress for itself, and of which they had a right exclusively to judge and to decide, and did decide, but the single question of the damages sustained *on account of such contract and such abrogation.* Under what law is it, certainly not under this section, that the First Comptroller is constituted a judge to decide whether facts decided by Congress are true or false? His is the humbler, though, when faithfully executed, the respectable and honorable duty of carrying out the will of Congress, not of repudiating it.

Congress, in this instance, were not so stultified as to empower a subordinate executive officer to determine for them whether what they thought, *with all the facts before them*, was a clear, but, from the want of existing law, an unavailing equity, deserved at their hands to be converted into a legal right, and whether, in view of such equity and of suffering justice, they ought or ought not to make a law for the case. Least of all, is it to be supposed that they intended to constitute this subordinate, as he seems to imagine, a tribunal expurgative to extirpate the very seeds of what he might conceive were legislative falsehoods.

Third. We will not abuse the patience of the President by seriously examining the constitutional questions which the Comptroller propounds for negative illustration. Not quite, but almost, he questions the constitutional power of Congress to allege the facts stated in this law, averred on its face, without submitting them to his review and ultimate decision. What could be more unhappy than his bank illustration? He supposes Congress, (the Supreme Court of the United States to the contrary notwithstanding, in two solemn and unanimous decisions,) not to have the constitutional power to charter a national bank, and yet, resolved to do so, to invoke the aid of a preamble! reciting the false fact (as he else assumes it would be) that such an institution was absolutely necessary to borrow money, collect the revenue, and pay the debts of the government! and with apparent and perhaps real gravity he adds: "If such be the fact, the constitutional power to incorporate the bank is beyond question; and if the recital of Congress be conclusive, there can be no inquiry as to the existence of that power!"

It is, however, respectfully submitted that in such a contest the bank would have the advantage of the Comptroller as to the facts in issue, particularly if he should then be in the Treasury Department instead of Congress, and still more especially after the President's approval of the charter. The result would not, however, "confiscate" the Comptroller's right to a contrary *private* opinion, or his right "of inquiry as to the existence of that power" as a fact; but we know not how but by flat usurpation he would be able to subvert the judgment and finding of Congress and the President. For success in such a Quixotic undertaking he would have to bring some future Congress and President to his aid. His private opinion and his solicitous desire to save the Constitution from violation by means of congressional falsehood would hardly move a court to issue a *scire facias* to annul the charter.

The Comptroller's "confiscation" argument is equally unhappy. His mind dwelling, as it seems to have done, on the falsehood and venality of Congress, he readily imagines that body wishing to condemn to public use some valuable property of his own without compensation, and for that purpose falsely reciting in the act passed for the purpose the fact that the property is of no value! If "such recital (he exclaims) be conclusive, the Constitution is no protection to me, and I am entirely without redress."

Passing by the consideration that this illustration presupposes the largest amount of total depravity, falsehood, and venality in Congress,

in the President, and in the judiciary, (a supposition no officer of the government should ever indulge in,) it is suggested that if such legislative averment of fact should be deemed prima facie evidence quite as disinterested as his contradictory protest of great value, and for a time override him, still he would be very low in personal standing if he was unable to command some judicial process to arrest the spoliation. And even then, with the presumption of fact thus assumed to be against him upon such an issue of value, the court, or some future legislature, might strongly incline to hear and relieve him.

Nothing, however, in such a case, can be imagined so calculated to retard his adjustment, or so beggar his demand, as to enforce against him his own standard of measuring the value of other people's property and sufferings!! If he were to plead before the redressing tribunal, legislative or judicial, his paper, wherein he assesses the dollars, and labors, and sufferings of other men, wherewith he forges the "confiscation" of Carmick & Ramsey, it is quite probable that his award of indemnification might give him measure for measure, might reduce him to a negative quantity, and require him to make some further contribution, and of real value to the public.

The Comptroller's further illustration presupposes joint depravity and idiocy in Congress and the President, with total prostitution in the claimants and their attorneys. As such, though in a grave official paper, it should not provoke even a passing criticism.

Fourth. It is obvious that the Comptroller has not consulted the documents within his reach, except *ex parte*. Even the report of the Senate committee of the 14th August, 1856, (a copy of which is herewith submitted, marked A,) and which, by a standard rule of construction, is ever deemed appropriate to explain, contemporaneously, the meaning of a statute, he blindly overlooks. He has hunted up fragmentary expressions in debate, and principally from the minority, on the passage of the law, to distort the law to his own evidently foregone conclusion, and to evade, repeal, or disregard it. And this he does as gravely as if he could not see that his argument thereon was directly in the teeth of his own conclusions. It is never parliamentary to "commit the lamb to the wolf." The opponents of a bill are never deemed the authoritative expounders of its object and intent, as this functionary seems to suppose. And whoever before imagined that an objection to a bill on its passage could in the slightest degree impair its validity as a statute? But in this instance the very objections urged against the passage of this law confute the conclusion that the "abrogation" of contract averred in it escaped the attention of Congress, or was misunderstood, or was intended to be committed to Mr. Comptroller's appellate advisement! The fact of *abrogation* was questioned in debate. The consequences of its averment were foretold in the very passages of the debate given by the Comptroller. And thus, with full notice, with fair understanding of the written words, with all the facts before them, *the contract itself spread out in the Senate committee's report, with no pretence* that the *sanction of Congress had been obtained*, the objections of those opposed to the bill, *founded on those very facts*, were overruled, and the bill as it now stands passed.

Lame, suicidal, indeed, as are, in these particulars, the conclusions of the Comptroller, his purpose is ill concealed. He has allowed himself to remain almost wholly uninformed as to the facts, or the prejudice of others has used the powers of his office to malign these claimants, and present a history defamatory of this legislation. All the pretended difficulties as to the time when the contract was to take effect, the condition of ratification by Congress, the orders for the mails contemporaneously with the final attestation of the contract, the expenditures before the contract was to take effect, the congruity of all these with the law as it now stands, were all fully explained by the committee's report herein before referred to.

As a just, rational, and sane officer, the Comptroller would have had perfect satisfaction on these points, (even though he be an infidel on the plain reading and letter of the law,) if he could be required to read this legislative exposition, so long in print and before his eyes. Instead of the pretence, in such bad taste, suggested by him, that Congress knew not what they were about, and had but a few sleepy hours at the close of a session to consider the matter, what are the facts? The subject was before that body and its committees for weeks during the last session of the 33d Congress. For many weeks during the first session of the 34th Congress it was again considered by the body and its committees. Two most elaborate printed memorials were on the desks of all the members, challenging the entire subject, and the whole of the Post Office Department, from its head down to its lowest subordinates, all engaged in efforts to defeat the law. The facts were almost wholly in public documents, on the shelves of the Capitol libraries and on the desks of members. For weeks especially was the matter before the committee of the Senate, to which tribunal again and again was Mr. Postmaster General Campbell challenged. He never, however, ventured to meet the inquiry. The documentary proofs were overwhelming, and he knew it, that he had used his official position to libel the claimants and their enterprise, and to deceive Congress, at the appropriate time, out of a just consideration of the subject. The law, as it is now before the President, was resolved on in committee many days before opportunity occurred for its report to the Senate. When the report was made, a majority of the body were already familiar with it, so much so that they had little need to debate it. The report of the committee accompanying the bill was in print two days, and on the tables of senators, before the subject was called up or debated. All this, after the perusal for weeks of the printed memorials and public documents, secured for the subject a general intelligence, unusual in measures of this description. The impeachment it involved of the head of a department had, independently of other considerations, attracted general attention in the Capitol. It is not believed that on any occasion, not involving a general public policy, more interest among members was ever awakened. The Postmaster General had all possible opportunities to meet the accusations against him, to explain and defend them. The committee offered him many more than he ventured to avail himself of. His agents were busy throughout the Capitol, and finally he was fairly overpowered by the truth, and the truth alone. The law was triumph-

antly passed. He, and all connected with him, and all others, at the time, considered it as the recorded judgment of Congress that the Postmaster General had wronged, foully wronged, the claimants, and that for the wrong damages were due them, and should be assessed and paid by the proper executive officers out of the funds of the government. No man was then crazy enough to suppose that Congress had so lamely and ignorantly attempted to accomplish this, their object, as to leave the whole matter to be re-examined and decided as Mr. Comptroller, in his judgment, without regard to that of Congress, might think, upon his revision of all the circumstances, was right. But the history of the law does not end here. At the last session of the 34th Congress, in December, 1856, the Postmaster General appealed to Congress to repeal it, and in this sought and obtained the assistance, officially, of Mr. Secretary of the Treasury Guthrie.—(See the Postmaster General's annual report of that date and that of the Secretary of the Treasury of the same date.)

Compare Mr. Campbell's historical narrative to Congress, but a compilation of his previous statement to Congress, then already familiar to the body, and you will identify almost the literal statement, over the signature of his successor, to the present Attorney General, and by him accepted as true on official comity. The same narrative, if not literally, substantially now appears again in renewed formal solemnity, over the signature of Comptroller Medill.

If Mr. Campbell did not know, what all others knew, that Congress had by their law, as they had a clear right to do, averred and found, and recorded as an intentional statufactory fact, *which no one should deny*, that the contract with the claimants had been abrogated by him; why did he so laboriously, yet so ingloriously, *seek of Congress its repeal or modification?* And why, so solicited, did they decline to repeal or modify?

Congress and its committees well knew what they had done was just what they had designed doing, and, therefore, deemed it derogatory to themselves, and to this their recorded will, to entertain the question of repeal, at the instance of the delinquent, the more especially as he had once been fully heard, adjudged, and convicted. But, at the session of Congress just closed, the law being still, as now, unexecuted by the Comptroller, the Judiciary Committee of the House, to whom the claimants' memorial upon the subject was referred, unanimously asserted, in a declaratory form, on the 11th June, 1858, that they could use no "more pointed words of command to the Comptroller" than were in the 6th section of the act of 1856, and that if the duty so exacted continued to be disregarded the only remedy was with the President. "If (say the committee) the First Comptroller has refused, or should refuse, to carry out this law, the President knowing it should cause him to be removed, and a person appointed who would obey the law. That Congress has taken its share of responsibility in declaring that a contract existed was abrogated, and that damages are due. Whether it has wisely or unwisely met and discharged that responsibility is not a question that can be reviewed now by the First Comptroller, the Secretary of the Treasury, the Postmaster General, or the President. That is a closed question. The President

has approved the law. In the opinion of the committee it is the duty of the First Comptroller to execute the existing law ''—(See the whole report accompanying this paper, marked B.)

Such are the multiplied and reiterated testimonials to vindicate the letter and substance of this law, all of which Comptroller Medill passes by without remark, and apparently with studied contempt.

If Congress and its laws can thus be contumeliously disposed of by a subordinate executive officer of the treasury, under the form of administration, it is high time for Congress and the people to realize the fact!

The recorded will of Congress and of its committees in this matter, first and last, under the color of administrative proceedings, have been treated with almost supercilious contempt. As fully illustrating the subject, see the report of the Judiciary Committee of the House, No. 206, David Gordon's case, 3d session of 34th Congress, adopted by the House, p. 8. The committee there say, "this is the true doctrine, and whenever it is ignored or disregarded *oppression* must inevitably be the consequence. It is hardly necessary for the committee to superadd that it is the duty of an executive officer to obey the law, not to reverse, much less to *pervert or defeat it*. To insinuate that Congress was not well advised of the facts when it passed the supplemental act is, in the judgment of the committee, a gratuitous assumption. As before observed, it is their duty to carry out *what is plainly expressed in the law*, not to question the intelligence or the motives under the influence of which the legislative will is made manifest in the statute book. Whenever it can be ascertained that *a purpose is in contemplation* by an executive officer to DEFEAT or to PERVERT the solemn enactments of the two Houses of Congress, and especially THE HUMANE INTENDMENT OF REMEDIAL LAWS, PASSED FOR THE RELIEF OF PRIVATE CLAIMANTS, it is AN UNHALLOWED USURPATION, and should not only be rebuked, but, if persisted in, the HIGHEST POWERS of the legislative branch of the government should be invoked TO PUT IT DOWN."

We can have no doubt that the President will also exercise the wholesome power with which he is invested by the Constitution to put down such an usurpation and contempt of law whenever and wherever it becomes necessary to prevent the legislative will from being defeated or perverted by a designing or ignorant executive officer. The 17th of the present month was the day appointed by the Comptroller himself to meet and confer with one of the undersigned, (Reverdy Johnson,) as the attorney of the claimants, to take up and consider the subject, pleading for the delay that had occurred the absence of two of his important clerks and the pressure of the current business of his office. This engagement was observed by his transmitting to that attorney, at Baltimore, through the mail, on the 11th instant, fifty-eight pages of irrelevant matter, ignoring and repudiating the very law itself! It is evident that, at the very time of the engagement just mentioned, this elaborate paper, which he calls a decision, was prepared, and required only to be copied to be made known by the Comptroller. So far from its being an "award" under the law, it is a palpable violation of it. It not only does not execute it, but declares virtually that Congress was ignorant upon the subject for which they legislated, and ought to be saved by this subordinate

from the consequences of such ignorance. Had this officer condescended to read, instead of superciliously passing by, the 7th page of the report of the Senate committee, before referred to, of the 14th August, 1856, marked A, he would have learned that the makers of the law never intended *him*, as their appellate advisor, to decide as to the fact of an "abrogation," any more than as to the fact of a contract. And he may, with as much propriety, charge Congress with untruth as to the fact of the contract as in respect to its abrogation. And this is the mode in which an act of Congress, passed for the relief of private citizens from official outrage, in the judgment of Congress entitling them to indemnity in money, is defied, or spurned, or "defeated," or "perverted."

As if this officer were unconscious of results, see page 3 of his paper for a suicidal confession. "Although (says he) in my conclusions *I do not reach the question of damages at all*, it may not be improper *to advert* to that branch of the case for the single purpose of showing the inconsistency of the demand with the provisions of the law."

So he barely "adverted" to the *only* question on which the execution of the law rested. That question he did "not reach in his conclusions."

In view of his own fancied irresponsibility, he now explains verbally, as we are credibly informed, that the President has no function whatever authorizing him to interpose. It being the high and salutary duty of the President, frequently and from necessity exercised, to see that the laws be executed, it is respectfully submitted that this case calls for the prompt execution of the power. The errors of this recusant officer must be corrected, or this law be suffered by the President to remain *unexecuted*, the will of Congress defied, and the rights of citizens outraged.

The President cannot himself do that which would be an execution of the legislative will, but he can direct it to be done by this official, or, he refusing, by selecting some one else to perform the duty.

Mr. Comptroller Whittlesey reported on the law before the incoming of the present officer, but, being arrested in his progress, did not "reach the question of damages." He only decided that damages were due. Was it pretended that that was an execution of the law? The law was, therefore, when Comptroller Medill came into office, unexecuted, and he now confesses that "in his conclusions" he did not "reach the question of damages at all." It consequently remains "unexecuted."

We confidently hope that the President will not permit laws to be thus construed off of the statue book; that he will not suffer mere forms of administration to extirpate the very essence of a statute, or the appearance or pretence of performance of duty to supply the office of performance in fact.

We, therefore, in behalf of the claimants in this instance, solicit at the hands of the President whatever may be found necessary to secure in good faith the execution of the law passed for their relief.

With high regard, we remain your obedient servants,

JOSEPH WILLIAMS.
REVERDY JOHNSON.

The PRESIDENT *of the United States.*